



IFW
DAC

IN THE UNITED STATES PATENT AND TRADEMARKS OFFICE

Applicant: Lezdey
Filed: 11/23/2001
Serial No.: ~~10/001,331~~ 10/001,311
For: ANTIMICROBIAL COMPOSITIONS

RECEIVED

JUL 09 2007

OFFICE OF PETITIONS

Mail Stop – PETITION
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

TRANSMITTAL

Dear Sir:

Please find enclosed for filing:

<input checked="" type="checkbox"/> Renewed Petition for Reconsideration	<input type="checkbox"/> Check in the Amount of \$
<input checked="" type="checkbox"/> Supporting Article of Interest	<input type="checkbox"/> Extension of Time
<input checked="" type="checkbox"/> Post Card	<input type="checkbox"/> Issue Fee Transmittal
<input checked="" type="checkbox"/> Certificate of Express Mail	<input type="checkbox"/> Declaration

Date: June 26, 2007

Docket No.: 1434

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING
DEPOSITED WITH THE UNITED STATES POSTAL SERVICE
AS FIRST CLASS MAIL IN AN ENVELOPE ADDRESSED TO:
COMMISSIONER OF PATENTS AND TRADEMARKS
Alexandria, VA 22313-1450

On June 26, 2007 Date of Deposit

PRINT OR TYPE NAME OF PERSON SIGNING CERTIFICATE

John Lezdey

SIGNATURE OF PERSON SIGNING CERTIFICATE

DATE

John Lezdey 6/26/07

Respectfully submitted,

John Lezdey
John Lezdey
Registration No. 22,735

JOHN LEZDEY & ASSOC.
2401 West Bay Dr., #118
Largo, FL 33770
(727) 588-0000 phone
(727) 588-0002 fax



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Lezdey
Serial No.: 10/001,331 10/001311
Filed: November 23, 2001
For: Antimicrobial Compositions

RECEIVED

JUL 09 2007

OFFICE OF PETITIONS

Mail Stop – Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Renewed Petition for Reconsideration

There is a misunderstanding of the facts. Petitioner was in Cape Cod at the time of the accident. The applications which were filed in September and November 2004 came from the Petitioner's office in Florida. The applications were in condition for filing prior to the accident and were awaiting Petitioner's return.

During August and September, Petitioner was lying in bed and in pain in the Cape Cod Hospital and later sent to a rehab hospital. The spinal fracture resulted in limited leg movement and Petitioner did not know if he could walk again until December, 2004. During August, September, October and November, 2004 Petitioner's focus was to be able to walk and to relieve the pain.

In the hospitals, Petitioner was bed ridden and had no files because he expected to return to the Florida office by September 1, 2004. It would be unreasonable to expect

Petitioner to concentrate on patent files when he was faced with being a paraplegic and in pain.

In January, 2005 Petitioner filed a Petition to Make Special and to request that the Petition also be considered as Unintentional. This petition was filed after Petitioner returned to Florida.

Petitioner had telephoned Mr. Brantley since a C-I-P was to be filed and revival of the application was needed. Mr. Brantley stated that revival for purpose of filing a C-I-P was possible so that Application No. 11/711,272 was filed.

It should be noted that the application relates to important business matters of Petitioner and his sons and relates to a marketed product.

There was not any intentional delay in filing any petitions. The C-I-P was filed after the discovery of an improvement.

Petitioner's accident occurred from being involved in a lawsuit over theft of Petitioner's trade secrets after being followed for years with burglaries occurring in Petitioner's home and office, a party suddenly appeared with what looked like a gun and petitioner fell to the ground to avoid being shot and fractured his spine.

Petitioner had many reasons to believe that he would be killed.

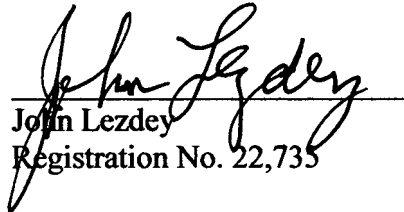
The lawsuit of AlphaMed Pharmaceuticals in the District Court in Miami brought out the threats against Petitioner.

At the present time Petitioner is still coping with pain and has limited movement of his legs.

In conclusion, Petitioner attempted to maintain his patent practice best he could under the circumstance and did not delay at times when he was physically capable of response to any patent and trademark matters.

Reconsideration and favorable action are earnestly solicited.

Respectfully submitted,



John Lezdey
Registration No. 22,735

John Lezdey & Associates
2401 West Bay Drive, Suite 118
Largo, FL 33770
(727) 588-0000 phone



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re.: ANTIMICROBIAL COMPOSITIONS
Serial No.: ~~10/001,331~~ 10/001,311
Filed: November 23, 2001
Applicant: Lezdey

RECEIVED
JUL 09 2007
OFFICE OF PETITIONS

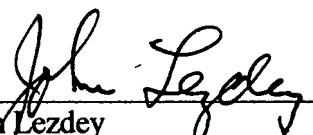
CERTIFICATE MAILING

Mail Stop - Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Hon. Commissioner:

I, John Lezdey, do hereby certify that the foregoing Renewed Petition for Reconsideration has been deposited in U.S. Mail, postage prepaid in an envelope addressed to the Commissioner for Patents, Mail Stop – Petitions, P.O. Box 1450, Alexandria, VA 22313-1450 on this date of **June 26, 2007**.

Respectfully submitted,


John Lezdey
Registration No. 22,735

John Lezdey & Associates
2401 West Bay Drive, Suite 118
Largo, FL 33770
(727) 588-0000 phone
(727) 588-0002 fax

eBay at the Supreme Court Connolly Bove's Lipitor Rescue

MARCH 2006

LAW & BUSINESS

ALPHA MALES

Behind AlphaMed's \$78 million trial victory
lies a bizarre story of betrayal. How a rift
between business partners has kept
a potential blockbuster drug off the market.

Clockwise from top:
AlphaMed's founders,
John Lander and sons
Jack and Darren.



Alpha Males

Behind AlphaMed's \$78 million victory in a trade secrets case lies a bizarre story of betrayal. How a rift between business partners has kept a potential wonder drug off the market. **By Lisa Lerer**

John Lezdey loves getting a dose of his own medicine. Almost 20 years ago, Lezdey, a 74-year-old patent lawyer and research chemist, helped create a potent antiviral drug that appears to work wonders on a number of ailments. He's been using it ever since. He doled it out to his sons for their swimmer's ear and sunburns. When he had gout, he claims it brought down the swelling in his feet. He even used it on the psoriasis of a patent examiner friend—turning him into a human patent claim. "I said: 'Okay, Morty, show them the improvement,'" Lezdey remembers. Unsurprisingly, the drug was patented. "Everything I tried it on, it worked," he says.

Lezdey's drug had all the makings of a blockbuster. But years of legal twists and turns, some seemingly out of a Grisham potboiler, have kept the drug off the market. The trouble began when Lezdey's former business partner, Dr. Allan Wachter, sued Lezdey in an Arizona state court claiming that Lezdey tried to derail a licensing agreement for the drug. Lezdey argued that Wachter signed the agreement behind his back, while Lezdey was recuperating from a stroke. Then things took a turn for the strange: Wachter and his company alleged that in retaliation Lezdey's son Jarrett rained down all kinds of violence, pouring acid on cars, shooting at office windows, and sending Wachter's lawyers a tarantula. The Federal Bureau of Investigation even got involved.

In 2002 the Lezdeys lost the Arizona case. Bankrupt, their reputation in tatters, the family hired lawyers, first from Duane Morris, and later—after the relationship with the



firm soured—from the Los Angeles litigation boutique Ze Hoffmann, Voelbel, Mason & Gette. The new lawyers filed a new suit in Miami, claiming that the Lezdeys were the victims of a years-long campaign of harassment aimed at crediting them and stealing their drug.

In January, six years after the Arizona suit was filed, a Miami federal court agreed, awarding the Lezdeys' company, AlphaMed Pharmaceuticals Corp., \$78 million in damages. The jury found that Wachter's company, Arriva Pharmaceuticals, Inc., had stolen trade secrets, engaged in unfair competition, and interfered with AlphaMed's business. (Arriva's lawyer, Jonathan Goodman of Akerman & Lipton, refused to comment on the litigation. The company



From left:
Darren, John, and
Jarett Lezdey.

other attorneys, from Morrison & Foerster, did not return calls. Wachter's lawyer David Tierney, of Phoenix's Sacks Tierney, would not comment.)

"I've been practicing for 23 years, and I've never had [a case] like this," says Lezdey lawyer Douglas Rovens, of Zelle, Hofmann's Los Angeles office. "Part of it was just so much bad blood."

All the drama began with that miracle drug: an artificial version of a therapeutic protein produced by the liver, Alpha 1-Antitrypsin (AAT). In 1986 Dr. Allan Wachter, a researcher at the University of Pennsylvania, contacted Lezdey, then working at the Philadelphia Patent Law Association, for patent advice. Wachter was working on a different

protein, called ACT, and Lezdey offered to collaborate with the doctor on his research. Their skills and experience meshed: Aside from his patent expertise, Lezdey was a former research chemist for The Scripps Research Institute; Wachter brought his medical background to the project. By 1988, the team had found that Wachter's protein wasn't viable—but a concentrated version of AAT was. They didn't have money for clinical studies, so Lezdey started testing concentrated AAT on friends and family. In 1992 they founded Protease Sciences, Inc., as a licensing agent for the AAT patents. Wachter became Protease's CEO; Lezdey was company president.

The company went nowhere. The drug was very early-

ALPHA MALES

stage, not far enough into development to interest risk-averse pharmaceutical companies in taking a license. So in 1997, Lezdey and Wachter founded a new company, Arriva, to begin testing and commercializing AAT. They brought aboard Philip Barr, former director of molecular biology of Chiron Corporation, and David Kent as president and chief financial officer. Wachter and Lezdey joined the company's board of directors. Jarrett Lezdey, 43, became director of marketing; Jarrett's brother Darren, 41, was made vice president of clinical development.

Even though Arriva was founded by Lezdey and Wachter, the company had limited rights to AAT. Under the terms of a 1997 licensing agreement, Barr and Kent had to raise at least \$2.2 million in financing during the company's first year, otherwise Arriva would lose its patent license. The company missed the goal by nearly \$1 million.

What happened next would shatter the relationship between Lezdey and Wachter. Lezdey was ready to back out, and says he rejected a proposal by Barr and Kent to approve a longer-term agreement. But Lezdey never got a chance to make his refusal official: In 1998 he had a stroke. While he was in the hospital, Lezdey claims that Arriva's board of directors voted him off the board and fired his two sons. The board, he claims, also signed off on extending the licensing agreement. Arriva then used that agreement to attract investment from Baxter Healthcare Corporation. (Barr and Kent could not be reached for comment.)

The Baxter deal was unenforceable, says Lezdey, because Arriva didn't have the legal rights to the drug. Protease's bylaws stated that only Lezdey, as company president, could officially approve licensing agreements. Lezdey claims he never even saw the paperwork for the Baxter deal.

The lawsuits came next. Wachter filed suits in California and Arizona state courts, alleging that John Lezdey and his wife and sons breached their fiduciary duty by trying to derail the Baxter agreement and acted on behalf of Protease without Wachter's consent. In court, Wachter and his lawyers painted the Lezdeys as dangerously vengeful.

Only the suit in Arizona stuck. The Lezdeys hired Mohr,

Hackett, Pederson, Blakley & Randolph, a local Phoenix firm, to defend them.

While the case proceeded, the Lezdeys regrouped. In 1998 they founded a new company, AlphaMed, to explore producing AAT from a different strain of yeast, specifically to cure eye and ear infections. The new company started filing for patents (today it holds 33) and soliciting investment. First, the work seemed promising. AlphaMed picked up \$1 million from British angel investor Robert Williams, partnered with the University of Nebraska, and started partnership negotiations with both the Netherlands-based Pharming Group N.V. and the University of Florida.

But what looked like a fresh beginning was really only the start of more trouble. AlphaMed's first year as a new business, became, in Darren Lezdey's estimation, "the worst year of our family's lives."

In 1999, the FBI came knocking—accusing Jarrett Lezdey of calling Wachter's wife, Susan, and threatening her life. Jarrett Lezdey claims he never made the call. "Every day someone was knocking on our door, serving us or accusing us," says Darren Lezdey.

Weird things started happening at the AlphaMed office, say the Lezdeys. The alarm system there went off constantly. Important documents went missing, lights were turned on and left on after the office had closed, and the Lezdeys spotted a strange man taking photos of the building. The Lezdeys suspected that Wachter and Arriva were involved, and their suspicions grew after several meetings with Arriva's lawyers. They seemed to have ESP, filing motions in court on issues the Lezdeys had only discussed in private. (During the Miami litigation, the Lezdeys learned that Arriva had taken documents from their trash.)

Then came the financial blows: In 2001, the partnership negotiations with Pharming Group abruptly ended, and the Williams withdrew his investment.

By early 2002, John Lezdey was broke. Defending the Arriva suits cost the family about \$50,000 a month, says Darren. When costs hit \$2 million, the Lezdeys were run dry and unable to pay their Mohr, Hackett lawyers. Now representing

1986: Dr. Allan Wachter, an allergy specialist, and John Lezdey, a patent lawyer and research chemist, start working together to develop an antiviral drug based on Alpha 1-Antitrypsin (AAT), a therapeutic protein produced by the liver.

1992: Wachter and Lezdey found Protease Sciences, Inc., to license the AAT patents.

1997: Wachter and Lezdey license the AAT patents to Arriva Pharmaceuticals, Inc., for one year. They agree to approve a longer-term license if Arriva executives raise \$2.2 million in funding. Executives fall \$1 million short of the goal.

1998: Without Lezdey's knowledge, Wachter signs a long-term license with Arriva.

himself, Lezdey filed for bankruptcy in Florida. The Arizona case against him was stayed, but deliberations in that court continued against his sons and wife.

The decision in Arizona came just days after Lezdey filed Chapter 13. In a scathing ruling, Judge Edward Burke issued a \$17 million judgment against Lezdey's wife and sons. "In 30 years of law practice in the commercial law area, I've seen some shocking things, but nothing comes close to the conduct of the defendants in this case," he said. Burke concluded that the Lezdey family lied in court, submitted fake evidence, and even forged Wachter's name on some documents. The Lezdeys, now without legal counsel, didn't show up to court when the judge ruled against them.

Determined to fight on, the Lezdeys went in search of a new legal team. Entering the terms "law firm" and "contingency" into Google, the Lezdeys found Duane Morris. And after an extensive yearlong review of the case file, Miami-based litigator and former FBI agent James McDonald agreed to take the case on contingency. McDonald and his team, litigation partner Lida Rodriguez-Taseff and bankruptcy partner Paul Orshan, filed a patent infringement suit against Arriva in Miami, as well as a false advertising claim under the Lanham Act. "My initial sense was that [the Lezdeys] were very believable and they had been wronged," says McDonald, now a partner at Squire, Sanders & Dempsey. "These were people that were getting the crap kicked out of them."

Soon the new lawyers were fighting back. The turnaround began when Arriva's lawyers filed for \$425,000 in attorneys' fees for their work in Arizona, and submitted their billing records to the court. When McDonald and the Lezdey sons started reviewing the invoices, they discovered mentions of a man named George Spinelli. Another quick

Google search identified Spinelli as a former FBI agent, now running his own private investigation firm, Spinelli Corporation, in Scottsdale, Arizona. McDonald immediately subpoenaed him.

Spinelli showed up to his deposition with boxes of AlphaMed and Lezdey family documents, which he claimed were taken from their curbside office trash cans. The documents included detailed notes kept on the family, says Darren. "I read the diaries," he says, "Imagine how creepy it is to read: 'followed Darren Lezdey into downtown—lost him in traffic.' or 'Light went on at Lezdey house in the bathroom at 9 P.M.'"

"I was followed for six years by Spinelli day and night," adds John Lezdey. (Spinelli did not return calls seeking comment.)

The Lezdeys believe that Spinelli Corporation's investigators took documents not just from the trash, but also from AlphaMed's offices and the homes of both Darren and Jarett Lezdey. Local police in Clearwater, Florida and Pinellas County, Florida have records of break-ins at both of the Lezdey sons' homes.

McDonald learned that Spinelli Corporation also had used the AlphaMed documents and Spinelli's personal connections to convince his former colleagues to open FBI investigations against the Lezdeys in Phoenix, San Francisco, Tampa, and Nevada. McDonald fought to see the FBI case files, figuring the authorities would have even more detailed information than Spinelli. After filing a motion to compel with the Miami court, he got them in mid-2003. "That was a treasure trove," says McDonald. "There was stuff in the FBI report [Arriva] thought would never see the light of day." The files revealed that Arriva had obtained AlphaMed's business records, along with privileged attorney-client documents that laid out the Lezdeys' entire theory of the case down to deposition questions.

In spite of the new evidence, the Lezdeys say they were growing unhappy with Duane Morris. They contend that the firm was pulling back because of the expense involved. Duane Morris wanted to pursue the case as a simple patent infringement dispute, to save money, says Darren, while cutting costs at a micro level by failing to depose additional wit-

1999: Wachter sues Lezdey, his wife and sons Jarett and Darren for breach of fiduciary duty in Arizona state court. The case quickly turns nasty, when Wachter accuses Jarett Lezdey of making violent threats.

July 1999: Lezdey founds AlphaMed Pharmaceuticals to develop AAT for treatment of ear and eye infections.

2000: Baxter Healthcare Corporation and Arriva announce a deal to codevelop an inhaled AAT product for treatment of lung diseases, including asthma and emphysema.

January 2001: Lezdey gets a patent on another kind of AAT drug, used specifically to treat eye and ear infections.

ALPHA MALES

nesses, sending junior lawyers to question key witnesses, and never directly accusing Spinelli of trade secret theft. "What they did to us is an absolute disgrace," says Darren. "Our lives hung in the balance."

McDonald left Duane Morris in late 2004 for Steel, Hector & Davis (which merged with Squire Sanders in September 2005), and would not comment about his former firm. However, Darren Lezdey says that McDonald disagreed with how Duane Morris was handling the case.

The final straw for the family: The Lezdeys learned that the lawyer replacing McDonald as lead counsel, Lida Rodriguez-Taseff, was married to Oscar Sanchez, a partner at Akerman Senterfitt, who had an office next door to Jonathan Goodman, the lead Arriva counsel. The Lezdeys fired Duane Morris in early 2005.

Duane Morris refused to comment on the specifics of the case. "AlphaMed obtained a phenomenal result with which they should be very happy," says Duane Morris's Orshan. "Our firm labored on behalf of AlphaMed for two-and-a-half years."

The family went looking for lawyers again, and this time they skipped Google. Jarett and Darren traveled all over the country, searching for another lawyer who would take their case on contingency. "We went to at least 100 law firms," says Darren, "but when Jarett and I walked into Doug [Rovens's] office, I thought that this is the kind of guy we need." It was an immediate gut reaction, say the brothers, who turned down other lawyers to work with Rovens because he seemed sharp, confident, and most importantly, empathetic.

Rovens became lead counsel in May, and McDonald rejoined as cocounsel. The two lawyers immediately refocused the case from a patent infringement suit to a trade secrets and unfair competition dispute. The lawyers claimed that the FBI's investigation—which never turned up evidence of criminal activity—hurt fledgling AlphaMed's business prospects. In March 2001 investigators questioned angel investor Williams, causing him to withdraw his investment. "[Spinelli Corporation] abused authority and got the FBI to engage, knowing how it would impact the company," says Rovens.

Arriva's answer to AlphaMed's Florida complaint, written by Goodman, denied all allegations, admitting only that it hired Spinelli Corporation "in good faith to provide safety and security to Dr. Allan Wachter and his family." In denying the trade secret claims, Arriva said that by throwing intact documents into the public trash and disclosing their trade secrets to third parties, AlphaMed did not adequately protect its trade secrets. Finally, tackling the business interference claim, Arriva claimed that its actions, including contacting the FBI and AlphaMed investors, were in good faith in response to threats of violence and intimidation.

The Lezdeys tried to settle the case before trial, says Rovens, asking for \$33 million. Arriva offered a piddling \$2.5 million, he says. So, in September, everyone—the Lezdeys, Arriva, Wachter, and Spinelli (now a named defendant)—headed into a difficult and long trial. After three months of testimony and five days of deliberation, the jury vindicated the Lezdeys. The court awarded AlphaMed \$48 million in compensatory damages, later adding another \$30 million in punitive damages. (Spinelli Corporation was fined a mere \$1 for misappropriation of trade secrets.) Since Duane Morris took the litigation on contingency, the firm still owed a cut of the damages, a claim that the Lezdeys plan to contest in court.

The fight isn't quite over. The Lezdeys lost their appeal in the Arizona case, so McDonald says that they are exploring other options for getting it overturned.

In Florida, Wachter and Arriva's lawyers filed a series of posttrial motions alleging chronic misconduct, and asking for a new trial. "We don't believe it's appropriate to be discussing the case with the press while those motions are pending," says Goodman.

On the business side, AlphaMed is trying to get back on its feet, seeking the \$5 million in investment needed to finally mass-produce some medicine. John Lezdey, however, is most concerned with getting his next dose. AAT helps relieve rheumatoid arthritis, he says. "Now I have arthritis, and am trying to get the drug in production," he says. "It's a real wonder drug." ■

March 2001: FBI agents question AlphaMed investor Robert Williams about the potentially criminal activities of the Lezdey family. This causes Williams to later withdraw his funding.

January 2002: Wiped out by litigation costs, Lezdey files for personal bankruptcy in Florida. The case against him in Arizona is stayed. The case against his sons and wife proceeds, and the judge in Arizona rules against them, awarding \$17 million in damages to Wachter.

January 2003: AlphaMed sues Arriva in federal district court in Miami for false advertising, stealing trade secrets, and unfair competition.

January 2006: A Miami jury awards AlphaMed \$78 million in damages.

the PREMIERE business magazine FOR intellectual property



IP Law & Business

is the NEW voice for intellectual property professionals at law firms and corporations alike, addressing the issues most vital to your practice.

Log on to: www.iplawandbusiness.com

Telephone: 615.850.5320

Email: subscribe@iplawandbusiness.com

ALM